

107TH CONGRESS  
1ST SESSION

# S. 1364

To ensure full and expeditious enforcement of the provisions of the Communications Act of 1934 that seek to bring about competition in local telecommunications markets, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. HOLLINGS (for himself, Mr. INOUE, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To ensure full and expeditious enforcement of the provisions of the Communications Act of 1934 that seek to bring about competition in local telecommunications markets, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Telecommunications  
5       Fair Competition Enforcement Act of 2001”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds:

1           (1) The Telecommunications Act of 1996 put in  
2           place the proper framework to achieve competition in  
3           local telecommunications markets.

4           (2) The Telecommunications Act of 1996 recog-  
5           nized that local exchange facilities are essential fa-  
6           cilities and required that all incumbent local ex-  
7           change carriers open their markets to competition by  
8           interconnecting with and providing network access to  
9           new entrants, a process to be overseen by Federal  
10          and State regulators.

11          (3) To increase the incentives of the Bell oper-  
12          ating companies to open their local networks to com-  
13          petition, the Telecommunications Act of 1996 allows  
14          the Bell operating companies to provide interLATA  
15          voice and data services in their service region only  
16          after opening their local networks to competition.

17          (4) While some progress has been made in  
18          opening local telecommunications markets, the Fed-  
19          eral Communications Commission has determined  
20          that, 6 years after passage of the Telecommuni-  
21          cations Act of 1996, the Bell operating companies  
22          have met the market opening requirements of that  
23          Act in only 5 States.

24          (5) It is apparent that the incumbent local ex-  
25          change carriers do not have adequate incentives to

1 cooperate in this process and that regulators have  
2 not exercised their enforcement authority to require  
3 compliance.

4 (6) By improving mandatory penalties on Bell  
5 operating companies and their affiliates that have  
6 not opened their network to competition, there will  
7 be greater assurance that local telecommunications  
8 markets will be opened more expeditiously and, as a  
9 result, American consumers will obtain the full bene-  
10 fits of competition.

11 (7) Competitive carriers continue to experience  
12 great difficulty in gaining access to the Bell net-  
13 work, and, 5 years after enactment of the Tele-  
14 communications Act of 1996, Bell operating compa-  
15 nies continue to control over 92 percent of all access  
16 lines nationwide.

17 **SEC. 3. PURPOSES.**

18 The purposes of this Act are—

19 (1) to improve and strengthen the enforcement  
20 of the Telecommunications Act of 1996, in order to  
21 ensure that local telecommunications markets are  
22 opened more rapidly to full, robust, and sustainable  
23 competition; and

1           (2) to provide an alternative dispute resolution  
 2           process for expeditious resolution of disputes con-  
 3           cerning interconnection agreements.

4 **SEC. 4. ENFORCEMENT OF COMPETITION.**

5           Title II of the Communications Act of 1934 (47  
 6 U.S.C. 201 et seq.) is amended by adding at the end the  
 7 following:

8                           “PART IV—ENFORCEMENT

9 **“SEC. 291. SHARED JURISDICTION OVER CERTAIN DIS-**  
 10 **PUTES.**

11           “(a) VIOLATIONS OF SECTIONS 251, 252, 271, AND  
 12 272.—A complaint under section 208 alleging that a spe-  
 13 cific act or practice or failure to act, of a Bell operating  
 14 company or its affiliate, constitutes a violation of section  
 15 251, 252, 271, or 272 may be filed at the Commission  
 16 or at a State commission.

17           “(b) ENFORCEMENT OF INTERCONNECTION AGREE-  
 18 MENTS.—An action to enforce compliance by a Bell oper-  
 19 ating company or its affiliate with an interconnection  
 20 agreement entered into under section 252 may be initiated  
 21 at the Commission or at a State Commission.

22           “(c) INITIATING PARTY.—A complaint described in  
 23 subsection (a) or an enforcement action described in sub-  
 24 section (b) may be brought by a telecommunications car-

1 rier or by the Commission or a State commission on its  
 2 own motion.

3 **“SEC. 292. EXPEDITED CONSIDERATION OF INTERCONNEC-**  
 4 **TION, INTERLATA, AND SEPARATE AFFILIATE**  
 5 **COMPLAINTS AND ENFORCEMENT ACTIONS.**

6 “(a) IN GENERAL.—The Commission shall make a  
 7 final determination with respect to any complaint de-  
 8 scribed in section 291(a) or an enforcement action de-  
 9 scribed in section 291(b) within 90 days after the date  
 10 on which the complaint, or the filing initiating the action,  
 11 is received by the Commission.

12 “(b) INTERIM RELIEF.—

13 “(1) VIOLATIONS OF ACT.—Within 30 days  
 14 after a complaint described in section 291(a) has  
 15 been filed with the Commission, the Commission  
 16 shall issue an order to the Bell operating company  
 17 or its affiliate named in the complaint directing it to  
 18 cease the act or practice that constitutes the alleged  
 19 violation, or initiate an act or practice to correct the  
 20 alleged violation, pending a final determination by  
 21 the Commission if—

22 “(A) the complaint contains a prima facie  
 23 showing that the alleged violation occurred or is  
 24 occurring;

1           “(B) the complaint describes with speci-  
2           ficity the act or practice, or failure to act, that  
3           constitutes the alleged violation; and

4           “(C) it appears from specific facts shown  
5           by the complaint or an accompanying affidavit  
6           that substantial injury, loss, or damage will re-  
7           sult to the complainant before the 90-day pe-  
8           riod in subsection (a) expires if the order is not  
9           issued.

10          “(2) INTERCONNECTION AGREEMENTS.—Within  
11          30 days after an enforcement action described in  
12          section 291(b) has been initiated at the Commission  
13          by a telecommunications carrier, the Commission  
14          shall issue an order to the Bell operating company  
15          or its affiliate named in the action directing it to  
16          cease the act or practice that constitutes the alleged  
17          noncompliance with the interconnection agreement,  
18          or initiate an act or practice to correct the alleged  
19          noncompliance, pending a final determination by the  
20          Commission if—

21               “(A) the filing initiating the action con-  
22               tains a prima facie showing that the alleged  
23               noncompliance occurred or is occurring;

1           “(B) the filing describes with specificity  
 2           the act or practice, or failure to act, that con-  
 3           stitutes the alleged noncompliance; and

4           “(C) it appears from specific facts shown  
 5           by the filing or an accompanying affidavit that  
 6           substantial injury, loss, or damage will result to  
 7           the telecommunications carrier before the 90-  
 8           day period in subsection (a) expires if the order  
 9           is not issued.

10       “(c) BURDEN OF PROOF.—In any proceeding under  
 11 this part with respect to a complaint described in section  
 12 291(a), or an enforcement action described in section  
 13 291(b), by a telecommunications carrier against a Bell op-  
 14 erating company or its affiliate, and upon a prima facie  
 15 showing by a carrier that there are reasonable grounds  
 16 to believe that there is a violation or noncompliance, the  
 17 burden of proof shall be on such Bell operating company  
 18 or its affiliate to demonstrate its compliance with the sec-  
 19 tion allegedly violated, or with the terms of such agree-  
 20 ment, as the case may be.

21       **“SEC. 293. ALTERNATIVE DISPUTE RESOLUTION OF INTER-**  
 22                               **CONNECTION COMPLAINTS.**

23       “(a) INTERCONNECTION AGREEMENTS.—A party to  
 24 an interconnection agreement entered into under section  
 25 252 may submit a dispute under the agreement to the al-

1 ternative dispute resolution process established by sub-  
 2 section (b). An action brought under this section may be  
 3 brought in lieu of an action described in section 291(b)  
 4 at the Commission or at a State commission.

5 “(b) ALTERNATIVE DISPUTE RESOLUTION PROC-  
 6 ESS.—

7 “(1) COMMISSION TO PRESCRIBE PROCESS.—

8 Within 180 days after the date of enactment of the  
 9 Telecommunications Fair Competition Enforcement  
 10 Act of 2001, the Commission shall, after notice and  
 11 opportunity for public comment, issue a final rule  
 12 implementing an alternative dispute resolution proc-  
 13 ess for the resolution of disputes under interconnec-  
 14 tion agreements entered into under section 252. The  
 15 process shall be available to any party to such an  
 16 agreement, including agreements entered into prior  
 17 to the date of enactment of that Act, unless such  
 18 prior agreement specifically precludes the use of al-  
 19 ternative dispute resolution.

20 “(2) PROCESS REQUIREMENTS.—In carrying  
 21 out paragraph (1), the Commission shall prescribe a  
 22 process that—

23 “(A) provides for binding private commer-  
 24 cial arbitration of disputes in an open, non-  
 25 discriminatory, and unbiased forum;



1           “(B) ensures that a dispute submitted to  
2           the process can be resolved within 45 days after  
3           the date on which the dispute is filed; and

4           “(C) requires any decision reached under  
5           the process to be in writing, available to the  
6           public, and posted on the Internet.

7           “(3) REQUESTS FOR INFORMATION.—Any per-  
8           son or panel conducting an arbitration under this  
9           subsection may require any party to the dispute to  
10          provide such information as may be necessary to en-  
11          able that person or panel to reach a decision with re-  
12          spect to the dispute. If the party that receives such  
13          a request for information fails to comply with such  
14          a request for information within 7 business days  
15          after the date on which the request was made, then,  
16          unless that party shows that the failure to comply  
17          was due to extenuating circumstances, the person or  
18          panel conducting the arbitration shall render a deci-  
19          sion or award in favor of the other party to the arbi-  
20          tration within 14 business days after the date on  
21          which the request was made. The decision or award  
22          in favor of a party shall not apply if the party in  
23          whose favor a decision or award would be rendered  
24          under the preceding sentence is not in compliance

1 with a request for information from the person or  
2 panel conducting the arbitration.

3 “(4) REMEDIES AND AUTHORITY OF ARBI-  
4 TRATOR.—Any person or panel conducting an arbi-  
5 tration under this subsection may grant to the pre-  
6 vailing party any relief available in law or equity, in-  
7 cluding remedies available under this Act, injunctive  
8 relief, specific performance, monetary awards, and  
9 direct, consequential, and compensatory damages.

10 “(5) ARBITRATION AWARD AND ENFORCE-  
11 MENT.—A final decision or award made by a person  
12 or panel conducting an arbitration under this sub-  
13 section shall be binding upon the parties and is not  
14 subject to appeal by the parties or review by the  
15 Commission, a State commission, or any Federal or  
16 State court. A decision or award under the process  
17 may be enforced in any district court of the United  
18 States having jurisdiction under sections 9 through  
19 13 of title 9, United States Code.

20 **“SEC. 294. ENFORCEMENT OF PERFORMANCE STANDARDS.**

21 “(a) COMMISSION TO PRESCRIBE PERFORMANCE  
22 STANDARDS FOR COMPLIANCE WITH INTERCONNECTION  
23 AGREEMENTS.—Not later than 180 days after the date  
24 of enactment of the Telecommunications Fair Competition  
25 Enforcement Act of 2001 the Commission shall, after no-

1 tice and opportunity for public comment, issue final rules  
2 for performance standards, data validation procedures,  
3 and audit requirements to ensure prompt and verifiable  
4 implementation of interconnection agreements entered  
5 into under section 252 and for the purposes of sections  
6 251, 252, 271, and 272. At a minimum, the rules shall  
7 include the most rigorous performance standards, data  
8 validation procedures, and audit requirements for such  
9 agreements adopted by the Commission or any State com-  
10 mission before the date of enactment of the Telecommuni-  
11 cations Fair Competition Enforcement Act of 2001, as  
12 well as any new performance standards, data validation  
13 procedures, and audit requirements needed to ensure full  
14 compliance with the requirements of this Act for the open-  
15 ing of local telecommunications markets to competition.  
16 In establishing performance standards, data validation  
17 procedures, and audit requirements under this section, the  
18 Commission shall ensure that such standards, procedures,  
19 and requirements are quantifiable and sufficient to deter-  
20 mine ongoing compliance by incumbent local exchange car-  
21 riers with the requirements of their interconnection agree-  
22 ments, including the provision of operating support sys-  
23 tems, special access, and retail and wholesale customer  
24 service standards, and for the purposes of enforcing sec-  
25 tions 251, 252, 271, and 272.

1       “(b) SPECIFIC REQUIREMENT FOR PROVISION OF  
 2 LOCAL LOOPS.—A Bell operating company or its affiliate  
 3 which has not been granted an exemption, suspension, or  
 4 modification under section 251(f) of the requirement to  
 5 provide access to local loops (including subloop elements  
 6 to the extent required under section 251(d)(2)) as an  
 7 unbundled network element under section 251(c)(3) shall  
 8 provide any such local loop to a requesting telecommuni-  
 9 cations carrier with which such Bell operating company  
 10 or affiliate has an interconnection agreement entered into  
 11 under section 252 within 5 business days after receiving  
 12 a request for a specific local loop.

13       “(c) ENFORCEMENT OF PERFORMANCE METRICS.—  
 14 Any violation of this section, or the rules adopted here-  
 15 under, shall be a violation of section 251.

16 **“SEC. 295. FORFEITURES; DAMAGES; ATTORNEYS FEES.**

17       “(a) IN GENERAL.—The forfeitures provided in this  
 18 section are in addition to any other requirements, forfeit-  
 19 ures, and penalties that may be imposed under any other  
 20 provision of this Act, any other law, or by a State commis-  
 21 sion or court.

22       “(b) FORFEITURES FOR VIOLATION OF SECTIONS  
 23 251, 252, 271, OR 272.—

24               “(1) IN GENERAL.—The Commission shall im-  
 25 pose a forfeiture of \$10,000,000 for each violation

1 by a Bell operating company or any affiliate of such  
 2 company of section 251, 252, 271, or 272, and a  
 3 forfeiture of \$2,000,000 for each day on which the  
 4 violation continues.

5 “(2) FORFEITURE INCREASED THREEFOLD FOR  
 6 REPEAT VIOLATIONS.—The forfeiture under para-  
 7 graph (1) shall be increased threefold for a repeated  
 8 violation of any such section by a Bell operating  
 9 company or its affiliate.

10 “(c) COMPENSATORY AND PUNITIVE DAMAGES;  
 11 COSTS AND ATTORNEY’S FEES.—

12 “(1) IN GENERAL.—In any civil action brought  
 13 by a telecommunications carrier against a Bell oper-  
 14 ating company or any affiliate of such company for  
 15 damages for a violation of section 251, 252, 271, or  
 16 272, or violation of any interconnection agreement  
 17 entered into under section 252 by a Bell operating  
 18 company, the carrier may be awarded—

19 “(A) both compensatory and punitive dam-  
 20 ages; and

21 “(B) reasonable attorney fees and costs in-  
 22 curred in bringing the action.

23 “(2) TREBLE DAMAGES.—In any such action,  
 24 the telecommunications carrier may be awarded tre-  
 25 ble damages for a repeated violation of any such sec-

1       tion or interconnection agreement by a Bell oper-  
 2       ating company or its affiliate.

3       “(d) FORFEITURE FOR FAILURE TO COMPLY WITH  
 4 ORDER GRANTING INTERIM RELIEF.—If the Bell oper-  
 5 ating company or its affiliate to which an order is issued  
 6 under section 292(b) does not comply with the order with-  
 7 in 7 days after the date on which the Commission releases  
 8 the order, and the Commission makes a final determina-  
 9 tion that the Bell operating company or affiliate is in vio-  
 10 lation of section 251, 252, 271, or 272, or violation of  
 11 an interconnection agreement entered into under section  
 12 252, then the Commission shall impose a forfeiture of  
 13 \$10,000,000 for each such violation, and a forfeiture of  
 14 \$2,000,000 for each day on which the violation continued  
 15 after issuance of the order.

16       “(e) ATTORNEYS FEES.—The Commission, a State  
 17 commission, a court, or person conducting an arbitration  
 18 under section 293 may award reasonable attorney fees and  
 19 costs to the prevailing party in an action commenced by  
 20 a complaint described in section 291(a), an enforcement  
 21 action described in section 291(b), or an alternative dis-  
 22 pute resolution proceeding under section 293, respectively.

23       “(f) FORFEITURES DIVIDED BETWEEN COMPLAIN-  
 24 ANTS AND COMMISSION.—Any forfeiture imposed under

1 subsection (b) or (d) shall be paid to the Commission and  
2 divided equally between—

3 “(1) either—

4 “(A) the party whose complaint com-  
5 menced the action that resulted in the deter-  
6 mination by the Commission, if the Commis-  
7 sion’s determination was made in response to a  
8 complaint; or

9 “(B) the party against which the violation  
10 was committed, if the action that resulted in  
11 the determination by the Commission was com-  
12 menced by the Commission or a State commis-  
13 sion; and

14 “(2) the Commission for use by its Enforce-  
15 ment Bureau for the purpose of enforcing parts II  
16 and III of title II of the Communications Act of  
17 1934 (47 U.S.C. 251 et seq. and 271 et seq.) and  
18 carrying out part IV of title II of that Act.

19 “(g) ADJUSTMENT FOR INFLATION.—The amount of  
20 each forfeiture provided for under subsections (b) and (d)  
21 shall be increased for violations during each calendar year  
22 beginning with 2004 by a percentage amount equal to the  
23 percentage increase (if any) in the CPI for the preceding  
24 year over the CPI for 2001. For purposes of this sub-  
25 section, the CPI for any year is the average for the 12

1 months of the year of the Consumer Price Index for all-  
 2 urban consumers published by the Department of Labor.

3 **“SEC. 296. SAVINGS CLAUSES.**

4       “(a) OTHER REMEDIES UNDER ACT.—The remedies  
 5 in this part are in addition to any other requirements or  
 6 penalties available under this Act or any other law.

7       “(b) ANTITRUST LAWS.—Nothing in this part modi-  
 8 fies, impairs, or supersedes the applicability of any anti-  
 9 trust law, except that a violation by an incumbent local  
 10 exchange carrier of section 251 or 252 shall also be a vio-  
 11 lation of the Act of July 2, 1890, commonly known as  
 12 the Sherman Anti-Trust Act (15 U.S.C. 1 et seq.).”.

13 **SEC. 5. RATEPAYER PROTECTION.**

14       The Commission shall not forbear from, or modify,  
 15 any cost allocation rules, accounting safeguards, or other  
 16 requirements in a manner that reduces its ability to en-  
 17 force the provisions of this Act.

18 **SEC. 6. STATUTE OF LIMITATIONS EXTENDED TO 3 YEARS.**

19       Section 503(b)(6) of the Communications Act of  
 20 1934 (47 U.S.C. 503(b)(6)) is amended by striking “1  
 21 year” each place it appears and inserting “5 years”.

22 **SEC. 7. STATE COMMISSIONS MAY USE FEDERAL FORFEIT-**  
 23 **URES.**

24       In any action brought before a State commission to  
 25 enforce compliance with section 251, 252, 271, or 272 of



1 the Communications Act of 1934 (47 U.S.C. 251, 252,  
 2 271, or 272) or an interconnection agreement entered into  
 3 under section 252, the State commission may apply to the  
 4 Federal Communications Commission requesting that the  
 5 Commission impose a forfeiture under section 295 of that  
 6 Act in addition to any relief granted by the State commis-  
 7 sion in that action. The Federal Communications Commis-  
 8 sion may impose a forfeiture under section 295 of that  
 9 Act upon application by a State commission under this  
 10 section if it determines that the State commission pro-  
 11 ceeding was conducted in accordance with the require-  
 12 ments of State law.

13 **SEC. 8. SEPARATION OF RETAIL AND WHOLESALE FUNC-**  
 14 **TIONS.**

15 (a) IN GENERAL.—Title II of the Communications  
 16 Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding  
 17 at the end the following:

18 **“SEC. 277. FUNCTIONAL SEPARATION OF RETAIL SERVICES.**

19 “(a) IN GENERAL.—A Bell operating company may  
 20 only provide retail service—

21 “(1) through a division that is legally separate  
 22 from the part of the Bell operating company that  
 23 provides wholesale services; and

24 “(2) in a manner that is consistent with the  
 25 Code of Conduct described in subsection (b).

1       “(b) CODE OF CONDUCT.—The Code of Conduct for  
2 the provision of retail service by a Bell operating company  
3 is as follows:

4           “(1) A Bell operating company shall transfer to  
5 its retail division all relationships with retail cus-  
6 tomers, including customer interfaces and retail bill-  
7 ing and all development, marketing, and pricing of  
8 retail services.

9           “(2) A Bell operating company shall transfer to  
10 its retail division all accounts for retail services and  
11 all assets, systems, and personnel used by the Bell  
12 operating company to carry out the business func-  
13 tions described in paragraph (1).

14          “(3) The retail division required by this  
15 section—

16           “(A) shall be operated independently from  
17 the wholesale services and functions of the Bell  
18 operating company of which it is a division;

19           “(B) shall maintain books, records, and ac-  
20 counts separate from those maintained by other  
21 departments, divisions, sections, affiliates, or  
22 units of the Bell operating company of which it  
23 is a division;

24           “(C) shall have separate employees and of-  
25 fice space from the wholesale services and func-

1           tions of the Bell operating company of which it  
2           is a division;

3           “(D) shall tie its management compensa-  
4           tion only to the performance of the retail divi-  
5           sion;

6           “(E) may not own any telecommunications  
7           facilities or equipment jointly with the Bell op-  
8           erating company of which it is a division;

9           “(F) shall not engage in any joint mar-  
10          keting with the wholesale services department,  
11          division, section, affiliate, or unit of the Bell op-  
12          erating company of which it is a division;

13          “(G) shall conduct all wholesale trans-  
14          actions with the Bell operating company of  
15          which it is a division on a fully compensatory,  
16          arms-length basis, in accordance with part 32  
17          of the Commission’s rules (part 32 of title 47,  
18          Code of Federal Regulations);

19          “(H) shall offer retail telecommunications  
20          service solely at rates set by tariff; and

21          “(I) shall also offer all of its retail tele-  
22          communications services to telecommunications  
23          carriers for wholesale purchase at the avoided  
24          cost discount as established pursuant to sec-  
25          tions 251(c)(4) and 252(d)(3).

1           “(4) A Bell operating company shall provide  
2           services, facilities, and network elements to any re-  
3           questing carrier, including its retail division solely at  
4           rates, terms, and conditions set by tariff; shall offer  
5           physical and virtual collocation pursuant to tariffs;  
6           shall not provide any retail service except through its  
7           retail division; and shall not grant its retail division  
8           any preferential intellectual property rights. The  
9           Bell operating company shall conduct any business  
10          with unaffiliated persons in the same manner as it  
11          conducts business with its retail division, and shall  
12          not prefer, or discriminate in favor of, such retail di-  
13          vision in the rates, terms, or conditions offered to  
14          the retail division, including—

15               “(A) fulfilling any requests from unaffili-  
16               ated persons for ordering, maintenance, and re-  
17               pair of unbundled network elements and serv-  
18               ices provided for resale, within a period no  
19               longer than that in which it fulfills such re-  
20               quests from its retail division;

21               “(B) utilizing the same operating support  
22               systems for dealings with unaffiliated persons  
23               providing telecommunications service as it uses  
24               with its retail division;

1           “(C) providing any customer or network  
 2           information to unaffiliated persons providing re-  
 3           tail services on the same terms and conditions  
 4           as it provides such information to its retail divi-  
 5           sion;

6           “(D) fulfilling any requests from an unaf-  
 7           filiated person for exchange access within a pe-  
 8           riod no longer than that in which it fulfills re-  
 9           quests for exchange access from its retail divi-  
 10          sion; and

11          “(E) fulfilling any such requests in sub-  
 12          paragraph (D) with service of a quality that  
 13          meets or exceeds the quality of exchange access  
 14          it provides to its retail division.

15          “(c) BIENNIAL AUDIT.—

16          “(1) GENERAL REQUIREMENT.—A Bell oper-  
 17          ating company shall obtain and pay for a joint Fed-  
 18          eral/State audit every 2 years which shall be con-  
 19          ducted by an independent auditor to determine  
 20          whether such company has complied with this sec-  
 21          tion and the regulations promulgated to implement  
 22          this section.

23          “(2) RESULTS SUBMITTED TO COMMISSION;  
 24          STATE COMMISSIONS.—The auditor described in  
 25          paragraph (1) shall submit the results of the audit

1 to the Commission and to the State commission of  
2 each State in which the company audited provides  
3 service, and the Commission shall make such results  
4 available for public inspection. Any party may sub-  
5 mit comments on the final audit report.

6 “(3) ACCESS TO DOCUMENTS.—For purposes of  
7 conducting audits and reviews under this  
8 subsection—

9 “(A) the independent auditor, the Commis-  
10 sion, and the State commission shall have ac-  
11 cess to the financial books, records, and ac-  
12 counts of each Bell operating company and its  
13 retail division necessary to verify transactions  
14 conducted with that company that are relevant  
15 to the specific activities permitted under this  
16 section and that are necessary for the regula-  
17 tion of rates;

18 “(B) the Commission and the State com-  
19 mission shall have access to the working papers  
20 and supporting materials of any auditor who  
21 performs an audit under this section; and

22 “(C) the State commission shall implement  
23 appropriate procedures to ensure the protection  
24 of any proprietary information submitted to it  
25 under this section.

1 “(d) TRANSITION.—

2 “(1) A Bell operating company shall have one  
3 year from the date of enactment of the Tele-  
4 communications Fair Competition Enforcement Act  
5 of 2001 to comply with subsections (a) and (b).

6 “(2) Until such time as the Bell operating com-  
7 pany complies with the requirements of subsection  
8 (a), it shall file quarterly reports demonstrating how  
9 it is implementing compliance with the non-  
10 discrimination requirements of subsection (b)(4).

11 “(e) RATEPAYER PROTECTION.—The Commission  
12 shall not relax any cost allocation rules, accounting safe-  
13 guards, or other requirements in a manner that reduces  
14 its ability to enforce the provisions of this section.

15 “(f) DEFINITIONS.—In this section:

16 “(1) BELL OPERATING COMPANY.—Notwith-  
17 standing section 3(4)(C), the term ‘Bell operating  
18 company’ includes any affiliate of such company  
19 other than its retail division.

20 “(2) RETAIL DEVISION.—The term ‘retail divi-  
21 sion’ means the division required by this section.

22 “(3) RETAIL SERVICE.—The term ‘retail serv-  
23 ice’ means any telecommunications or information  
24 service offered to a person other than a common car-  
25 rier or other provider of telecommunications.

1       “(g) REPORT ON VIOLATIONS.—Until December 31,  
 2 2010, the Commission shall report to Congress annually  
 3 on the amount and nature of any violations of sections  
 4 251, 252, 271, and 272 by each Bell Operating Company.

5       “(h) PRESERVATION OF EXISTING AUTHORITY.—  
 6 Nothing in this section shall be construed to limit the au-  
 7 thority of the Commission under any other section of this  
 8 Act to prescribe additional safeguards consistent with the  
 9 public interest, convenience, and necessity.

10 **“SEC. 278. SEPARATE RETAIL AFFILIATE.**

11       “(a) REPEATED VIOLATIONS.—If, beginning 2 years  
 12 after enactment of the Telecommunications Fair Competi-  
 13 tion Enforcement Act of 2001, the Commission finds that  
 14 a Bell operating company willfully or knowingly violated  
 15 the requirements of sections 251, 252, 271, or 272 of this  
 16 Act, the Commission may require the Bell Operating Com-  
 17 pany to implement structural separation under this sec-  
 18 tion.

19       “(b) IN GENERAL.—If the Commission requires a  
 20 Bell operating company to implement structural separa-  
 21 tion under this section, then that Bell operating company  
 22 may provide retail services only through a separate affil-  
 23 iate. A Bell operating company and a separate affiliate  
 24 established under this section shall not engage in any joint



1 marketing of retail services, notwithstanding section  
2 272(g).

3 “(c) STRUCTURAL SEPARATION OF BUSINESS.—A  
4 Bell operating company shall comply with subsection (b)  
5 by transferring the following business functions to its re-  
6 tail affiliate, at the higher of book value or market value:

7 “(1) all relationships with retail customers, in-  
8 cluding customer interfaces and retail billing; and

9 “(2) all development, marketing, and pricing of  
10 retail services.

11 “(d) STRUCTURAL SEPARATION OF ASSETS.—

12 “(1) A Bell operating company shall comply  
13 with subsection (b) by transferring the following as-  
14 sets to its retail affiliate at the higher of book or  
15 market value:

16 “(A) all accounts for retail services, subject  
17 to the requirements of subsection (j); and

18 “(B) all assets, systems, and personnel  
19 used by the Bell operating company to carry  
20 out the business functions described in sub-  
21 section (c).

22 “(2) The price, terms, and conditions of the  
23 transfer of assets required by paragraph (1) shall be  
24 made publicly available.

1       “(e) SEPARATE SUBSIDIARY SAFEGUARDS.—The  
2 separate affiliate required by this section—

3               “(1) shall operate independently from the Bell  
4 operating company;

5               “(2) shall maintain books, records, and ac-  
6 counts separate from those maintained by the Bell  
7 operating company of which it is an affiliate;

8               “(3) shall have separate officers and directors  
9 from the Bell operating company of which it is an  
10 affiliate;

11              “(4) shall have separate capital stock, the out-  
12 standing shares of which may not be held by the  
13 Bell operating company in any amount exceeding  
14 four times the amount of shares held by unaffiliated  
15 persons;

16              “(5) shall have separate employees and separate  
17 employee benefit plans from the Bell operating com-  
18 pany of which it is an affiliate;

19              “(6) may not obtain credit under any arrange-  
20 ment that would permit a creditor, upon default, to  
21 have recourse to the assets of the Bell operating  
22 company;

23              “(7) may not own any telecommunications fa-  
24 cilities or equipment;

1           “(8) shall conduct all transactions with the Bell  
2           operating company of which it is an affiliate on an  
3           arms’ length basis, with any such transactions re-  
4           duced to writing and available for public inspection;

5           “(9) shall offer retail telecommunications serv-  
6           ice solely at rates set by tariff;

7           “(10) shall offer all of its retail telecommuni-  
8           cations services for wholesale purchase at the avoid-  
9           ed cost discount as established pursuant to sections  
10          251(c)(4) and 252(d)(3);

11          “(11) shall have separate office space from the  
12          wholesale services and functions of the Bell oper-  
13          ating company of which it is an affiliate;

14          “(12) shall tie its management compensation  
15          only to the performance of the retail affiliate; and

16          “(13) shall conduct all wholesale transactions  
17          with the Bell operating company of which it is an af-  
18          filiate on a fully compensatory basis, in accordance  
19          with part 32 of the Commission’s rules (part 32 of  
20          title 47, Code of Federal Regulations).

21          “(f) NONDISCRIMINATION SAFEGUARDS.—A Bell op-  
22          erating company—

23               “(1) shall provide services, facilities and net-  
24               work elements to any requesting carrier, including  
25               its retail affiliate, solely at rates set by tariff;

1           “(2) shall conduct any business with unaffili-  
2           ated entities in the same manner as it conducts busi-  
3           ness with its retail affiliate, and shall not prefer, or  
4           discriminate in favor of, such retail affiliate in the  
5           rates, terms, or conditions offered to the retail affil-  
6           iate, including—

7                   “(A) fulfilling any requests from an unaf-  
8                   filiated entity for exchange access service within  
9                   a period no longer than that in which it fulfills  
10                  requests for exchange access service from its re-  
11                  tail affiliate;

12                  “(B) fulfilling any such requests with serv-  
13                  ice of a quality that meets or exceeds the qual-  
14                  ity of exchange access services it provides to its  
15                  retail affiliate;

16                  “(C) fulfilling any requests from an unaf-  
17                  filiated entity for ordering, maintenance and re-  
18                  pair of unbundled network elements and serv-  
19                  ices provided for resale, within a period no  
20                  longer than that in which it fulfills such re-  
21                  quests from its retail affiliate;

22                  “(D) utilizing the same operating support  
23                  systems for dealings with unaffiliated entities  
24                  providing telecommunications service as it uses  
25                  with its retail affiliate; and

1           “(E) providing any customer or network  
2           information to unaffiliated entities providing  
3           telecommunications services on the same terms  
4           and conditions as it provides such information  
5           to its retail affiliate;

6           “(3) shall not offer physical and virtual collocation other than pursuant to generally available tariffs;  
7  
8

9           “(4) shall not grant its retail affiliate any preferential intellectual property rights; and  
10

11           “(5) shall not provide any retail service for its  
12           own use, but shall procure such services from a carrier other than its retail affiliate.  
13

14           “(g) BIENNIAL AUDIT.—

15           “(1) GENERAL REQUIREMENT.—A Bell operating company shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company  
16  
17  
18  
19  
20  
has complied with this section and the regulations promulgated under this section.

21           “(2) RESULTS SUBMITTED TO COMMISSION;  
22           STATE COMMISSIONS.—The auditor described in  
23           paragraph (1) shall submit the results of the audit  
24           to the Commission and to the State commission of  
25           each State in which the company audited provides

1 service, which shall make such results available for  
 2 public inspection. Any party may submit comments  
 3 on the final audit report.

4 “(3) ACCESS TO DOCUMENTS.—For purposes of  
 5 conducting audits and reviews under this  
 6 subsection—

7 “(A) the independent auditor, the Commis-  
 8 sion, and the State commission shall have ac-  
 9 cess to the financial books, records, and ac-  
 10 counts of each Bell operating company and of  
 11 its affiliates necessary to verify transactions  
 12 conducted with that company that are relevant  
 13 to the specific activities permitted under this  
 14 section and that are necessary for the regula-  
 15 tion of rates;

16 “(B) the Commission and the State com-  
 17 mission shall have access to the working papers  
 18 and supporting materials of any auditor who  
 19 performs an audit under this section; and

20 “(C) the State commission shall implement  
 21 appropriate procedures to ensure the protection  
 22 of any proprietary information submitted to it  
 23 under this section.

24 “(h) PRESERVATION OF EXISTING AUTHORITY.—

25 Nothing in this section shall be construed to limit the au-

1 thority of the Commission under any other section of this  
 2 Act to prescribe safeguards consistent with the public in-  
 3 terest, convenience, and necessity.

4 “(i) PRESUBSCRIPTION.—Concurrent with the estab-  
 5 lishment of the separate retail affiliate required by this  
 6 section, in any local calling area served by a Bell operating  
 7 company, consumers shall have the opportunity to select  
 8 their provider of telephone exchange service by means of  
 9 a balloting process established by rule by the Commission.

10 “(j) RATEPAYER PROTECTION.—The Commission  
 11 shall not relax any cost allocation rules, accounting safe-  
 12 guards, or other requirements in a manner that reduces  
 13 its ability to enforce the provisions of this section.

14 “(k) DEFINITIONS.—In this section:

15 “(1) BELL OPERATING COMPANY.—Notwith-  
 16 standing section 3(4)(C), the term ‘Bell operating  
 17 company’ includes any affiliate of such company  
 18 other than its retail affiliate.

19 “(2) RETAIL AFFILIATE.—The term ‘retail af-  
 20 filiate’ means the affiliate required by this section.

21 “(3) RETAIL SERVICE.—The term ‘retail serv-  
 22 ice’ means any telecommunications or information  
 23 service offered to a person other than a common car-  
 24 rier or other provider of telecommunications.”.

